

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTHONY AVERITT,

Plaintiff,

v.

CITY OF TACOMA,

Defendant.

Case No. C10-5249BHS/JRC

REPORT AND RECOMMENDATION

NOTED November 26, 2010

This title 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4.

On April 29, 2010, the clerk's office sent plaintiff a letter explaining that service copies of his complaint were needed (ECF No. 2). No response was received. On August 23, 2010, the court entered an order to show cause why the action should not be dismissed for failure to prosecute (ECF No. 8). No response was received.

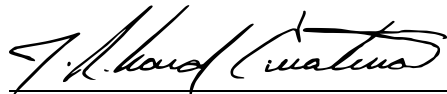
1 As of November 1, 2010, plaintiff has failed to respond to two attempts to obtain service  
2 documents. He has been given the opportunity to show cause why this action should not be  
3 dismissed.

4 Fed. R. Civ. P. 4(m) gives plaintiff 120 days to perfect service and failure to do so results  
5 in dismissal without prejudice. It has been more than 120 days since this action was commenced  
6 and service has not been perfected on any defendant.

7  
8 The undersigned recommends dismissal of this action without prejudice for failure to  
9 prosecute, failure to respond to court orders, and failure to perfect service within the time frame  
10 set forth in the Federal Rules of Civil Procedure.

11 The action should be DISMISSED WITHOUT PREJUDICE. Pursuant to 28 U.S.C. §  
12 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this  
13 Report to file written objections. See also Fed. R. Civ. P. 6. Failure to file objections will result  
14 in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985).  
15 Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for  
16 consideration on November 26, 2010, as noted in the caption.

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18 Dated this 1<sup>st</sup> day of November, 2010.

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22 J. Richard Creatura  
23 United States Magistrate Judge  
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